

**IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI**

STATE OF MISSOURI, ex rel.)	
Attorney General Chris Koster,)	
)	
Plaintiff,)	
)	
vs.)	Case No:
)	
CORY SMITH,)	
an individual)	
d/b/a- Switzer Construction)	Division:
)	
Serve at:)	
229 Holliday Street)	
Osage City, KS 66523)	
)	
Defendant.)	

**PETITION FOR PERMANENT INJUNCTION, RESTITUTION, CIVIL
PENALTIES, AND OTHER COURT ORDERS**

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster, brings this Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties, and Other Court Orders against Cory Smith, d/b/a Switzer Construction (“Defendant”), and upon information and belief states as follows:

PARTIES

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity

pursuant to Chapter 407, RSMo 2010.¹

2. Defendant Cory Smith is an individual residing at 229 Holliday Street, Osage City, in the State of Kansas, and the owner of Switzer Construction, LLC., an administratively dissolved Missouri limited liability corporation. Switzer Construction is currently registered as a fictitious name with the Missouri Secretary of State. Defendant previously operated the business from a location in Boone County, Missouri.

3. Any acts, practices, methods, uses, solicitations, or conduct of the Defendant alleged in this petition include the acts, practices, methods, uses, solicitations or conduct of Defendant's employees, agents, or other representatives acting under their direction, control, or authority.

4. The Defendant has done business within the State of Missouri by offering for sale or selling residential exterior restoration services including, but not limited to, roof, gutter, and deck repair and replacement, to persons within the State of Missouri.

JURISDICTION

5. This Court has subject matter jurisdiction over this action under Art. V, § 14 Mo. Const. and § 407.010 et. seq., which allows the Attorney

¹ All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* “(Supp. 2011)” —the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

General to seek injunctive relief and civil penalties for violations of § 407.020.

VENUE

6. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

7. Defendant has advertised, marketed, and offered for sale home remodeling and construction services in Missouri, and has engaged in the acts, practices, methods, uses, and conduct described below in violation of § 407.020 in Boone and Cole County, Missouri, among other Missouri locations.

MERCHANDISING PRACTICES ACT

8. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice.... Any act, use or

employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

9. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5).

10. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4).

11. “Sale” is defined as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.” § 407.010(6).

12. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms ‘trade’ and ‘commerce’ include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

13. Defendant has advertised merchandise in trade or commerce within the meaning of § 407.010.

14. Pursuant to authority granted in § 407.145, the Attorney General

has promulgated rules explaining and defining terms utilized in §§ 407.010 to 407.145 of the Merchandising Practices Act. Said rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to Plaintiff's Merchandising Practices Act allegations include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

ALLEGATIONS OF FACTS RELEVANT TO ALL COUNTS

15. From at least August 2012, through September 2013, Defendant sold residential exterior restoration goods and services to Missouri consumers including roof and deck replacements, from his location in Boone County, Missouri.

16. Defendant contracted with consumers to provide exterior restoration goods and services agreeing that in consideration for an advance payment Defendant would provide the goods and services.

17. After promising consumers he would begin the work, Defendant failed to provide the goods or services stated in the agreement executed by the Defendant.

18. Defendant accepted at least \$21,000.00 from at least eight consumers for goods and services not provided.

19. As of the date of this petition, Defendant has not provided the goods or services nor refunded the consumers.

20. Defendants contracted with other consumers in Missouri in 2012 or 2013 to provide residential exterior restoration goods and services in exchange for an advance payment that are unknown at this time.

Consumer Example

21. Mr. Brian Mitchum contracted with Defendant in July 2013, to replace the deck on the home, including labor and materials for removal of the deck and replacement with a new deck, located in Columbia, Boone County, MO.

22. Mr. Mitchum paid an advance payment to Defendant of \$1,550.00 before he began work.

23. Defendant has not provided any goods or services in consideration of the aforementioned payment or provided a refund to Mr. Mitchum for goods or services not provided.

VIOLATIONS

COUNT I- FALSE PROMISE

24. Plaintiff incorporates all allegations stated above.

25. Defendant has engaged in conduct that violates § 407.020 by falsely promising that he would provide exterior home restoration goods and services to consumers, which was false or misleading as to Defendant's intentions or ability to perform the promise or the likelihood the promise

would be performed.

COUNT II - DECEPTION

26. Plaintiff incorporates all allegations stated above.

27. Defendant engaged in acts and practices of using deception, both expressly and impliedly, by creating the false impression that exterior home restoration services contracted for with consumers would be provided according to the terms of the agreement, and then failing to provide those materials and services.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that the Defendant has violated the provisions of § 407.020.

B. Issuing a permanent injunction pursuant to § 407.100 prohibiting and enjoining Defendant and his agents, servants, employees, representatives, and other individuals acting at their direction or on his behalf from doing business in the State of Missouri or from performing any home repair, remodeling, or exterior home restoration services in the State of Missouri.

C. Requiring Defendant pursuant to § 407.100.4 to provide full restitution to all consumers from whom Defendant has received monies and

who have been aggrieved by the use of any of the unlawful, unfair or deceptive acts and practices alleged herein.

D. Requiring Defendant pursuant to § 407.100.6 to pay to the State a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

E. Requiring Defendant pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against Defendant, or such other amount as the Court deems fair and equitable.

F. Requiring Defendant pursuant to § 407.130 to pay all court, investigative, and prosecution costs of this case.

G. Granting any additional relief that the Court deems proper in the premise.

Respectfully submitted,

CHRIS KOSTER
Attorney General

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